

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Jonathan Ellenberg et al.  
Serial No.: 09/624,439  
Filing Date: July 24, 2000  
Group Art Unit: 3694  
Examiner: Daniel S. Felton  
Confirmation No.: 5413  
Title: SYSTEM AND METHOD FOR CONDUCTING A  
CUSTOMER AFFINITY PROGRAM AUCTION

Commissioner of Patents  
P. O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

**NON-FEE PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW  
HOLDING OF ABANDONMENT**

This petition is filed in response to the Notice of Abandonment mailed November 19, 2007. This Petition under 37 C.F.R. § 1.181 is to request that the holding of abandonment be withdrawn.

A non-final Office Action was mailed on May 10, 2007. The six-month final deadline to file a response was Saturday, November 10, 2007. Thus, the due date fell on a weekend. On Monday, November 12, 2007, the United States Patent and Trademark Office was closed in observance of Veterans Day. On Tuesday, November 13, 2007, Applicant electronically filed an Amendment in response to the Office Action and a request for a three (3) month extension of time. The Notice of Abandonment was mailed on November 19, 2007.

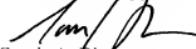
Under 37 C.F.R. § 1.7(a), when a due date falls on a Saturday, Sunday, or federal holiday, the action may be taken on the succeeding business day. In the present case, the six-month due date to file the response was November 10, 2007, which was a Saturday. Monday, November 12, 2007, was a federal holiday.

Therefore, under 37 C.F.R. § 1.7(a), a response filed on the next business day -- Tuesday, November 13, 2007 -- would be timely. As evidenced by the attached Acknowledgement Receipt, Applicant electronically filed the Amendment and a request for a three (3) month extension on November 13, 2007. Therefore, the Amendment was timely filed under 37 C.F.R. § 1.7(a) and the holding of abandonment is improper. Relevant documents demonstrating that the holding of abandonment is improper are provided in the following attachments:

1. Copy of Acknowledgement Receipt (EFS ID 2461207), dated November 13, 2007.
2. Copy of Amendment under 37 C.F.R. § 1.111, filed November 13, 2007.
3. Copy of Petition and Fee for Extension of Time (37 C.F.R. § 1.136(a)), filed November 13, 2007.
4. Copy of Office Action mailed May 10, 2007.
5. Copy of the Notice of Abandonment mailed November 19, 2007.

Because Applicant timely filed a proper response to the Office Action and a request for extension of time, the Notice of Abandonment was improper. Therefore, it is respectfully requested that the Notice of Abandonment be withdrawn and that the attached Amendment be entered. It is not believed that any fees are due. However, if it is determined that a petition fee or any additional fees are due, please charge these fees to Baker Botts L.L.P. Deposit Account No. 02-0384.

Respectfully submitted,  
BAKER BOTTS L.L.P.  
Attorneys for Applicants



Samir A. Bhavsar  
Reg. No. 41,617  
214.953.6581

Date: January 11, 2008  
Customer No. **05073**

**Acknowledgement Receipt**

The USPTO has received your submission at **15:50:31** Eastern Time on **13-NOV-2007** by Deposit Account: 134500.

**\$ 1050** fee paid by e-Filer via *RAM* with Confirmation Number: 1077.

**eFiled Application Information**

EFS ID	2461207
Application Number	09624439
Confirmation Number	5413
Title	System and method for conducting a customer affinity program auction
First Named Inventor	Jonathan Ellenberg
Customer Number or Correspondence Address	27123
Filed By	Allen CS Chein/Alicia Padro
Attorney Docket Number	3951-4001
Filing Date	24-JUL-2000
Receipt Date	13-NOV-2007
Application Type	Utility under 35 USC 111 (a)

**Application Details**

Submitted Files	Page Count	Document Description	File Size	Warnings
3951-4001_US_Amendment.pdf	13		510140 bytes	◆ PASS
<b>Document Description</b>				
Amendment - After Non-Final Rejection			1	1
Claims			2	9
Applicant Arguments/Remarks Made in an Amendment			10	13
3951-4001_US_Petition_Extension_of_Time.pdf	3	Extension of Time	88800 bytes	◆ PASS
fee-info.pdf	2	Fee Worksheet (PTO-06)	8161 bytes	◆ PASS

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

*If you need help:*

- *Call the Patent Electronic Business Center at (866) 217-9197 (toll free) or e-mail [EBC@uspto.gov](mailto:EBC@uspto.gov) for specific questions about Patent e-Filing.*
- *Send general questions about USPTO programs to the USPTO Contact Center (UCC).*
- *If you experience technical difficulties or problems with this application, please report them via e-mail to [Electronic Business Support](mailto:Electronic_Business_Support) or call 1 800-786-9199.*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 09/624,439 Confirmation No.: 5413  
Applicants: Jonathan Ellenberg, et al. Group Art Unit: 3693  
Filed: July 24, 2000 Examiner: Felten, Daniel S.  
For: SYSTEM AND METHOD FOR CONDUCTING A CUSTOMER AFFINITY Customer No.: 27123  
PROGRAM AUCTION

**AMENDMENT UNDER 37 C.F.R. § 1.111**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the non-final Office Action dated May 10, 2007, please amend the above identified application as indicated below:

**Amendments to the Claims** are reflected in the listing of claims which begins on page 2 of this paper; and

**Remarks/Arguments** begin on page 10 of this paper.

**Amendment to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application.

**Listing of Claims:**

1. (Currently Amended) A method of conducting a customer affinity program auction, comprising:

determining a minimum opening bid price by applying an auction pricing discount factor in reward points based at least on merchandise being auctioned and the time period of the auction; and

receiving a bid of reward points from a customer using a computer terminal for the merchandise being offered in the auction.

2. (Original) The method of claim 1, further comprising:

receiving registration information from the customer.

3. (Original) The method of claim 2, wherein the customer registration information includes payment information.

4. (Original) The method of claim 1, further comprising:

providing a preview of the merchandise being offered in the auction.

5. (Original) The method of claim 1, further comprising

authenticating the customer; and

allowing the customer to access a reward points balance.

6. (Original) The method of claim 5 further comprising

allowing the customer to purchase additional reward points for use in the auction.

7. (Original) The method of claim 6, wherein the customer is allowed to purchase a specific number of reward points at an exchange rate.

8. (Original) The method of claim 7 further comprising determining a cost for the reward points purchased and transmitting a request for payment for the cost of the reward points.

9. (Original) The method of claim 6, further comprising allowing a purchase of reward points on a floating basis.

10. (Original) The method of claim 1, further comprising:  
deducting reward points expended in the auction from a reward points balance.

11. (Original) The method of claim 9, further comprising:  
determining a cost for purchasing reward points expended in the auction in excess of the customer's reward points balance and transmitting a request for payment for the cost of the reward points.

12. (Currently Amended) A customer affinity program auction system,  
comprising:

a central controller constructed to receive a bid of reward points from a customer for merchandise being offered in the auction;

wherein said central controller is constructed to determine a minimum opening bid price by applying an auction pricing discount factor in reward points based at least on the merchandise being auctioned and the time period of the auction.

13. (Original) The system of claim 12, further comprising:  
the central controller is constructed to receive registration information from the customer.

14. (Original) The system of claim 13, wherein the customer registration information received by the central controller includes payment information.

15. (Original) The system of claim 12, further comprising:  
the central controller is constructed to provide a preview of the merchandise being offered in the auction.

16. (Original) The system of claim 12, further comprising  
the central controller is constructed to authenticate the customer and allow the customer to access a reward points balance.

17. (Original) The system of claim 16 further comprising  
the central controller is constructed to allow the customer to purchase additional reward points for use in the auction.

18. (Original) The system of claim 17, wherein the central controller is constructed to allow the customer to purchase a specific number of reward points at an exchange rate.

19. (Original) The system of claim 18 further comprising the central controller is constructed to determine a cost for the reward points purchased and transmits a request for payment for the cost of the reward points.

20. (Original) The system of claim 17, wherein the central controller is constructed to allow the customer to purchase reward points on a floating basis.

21. (Original) The system of claim 12, further comprising:  
the central controller is constructed to deduct reward points expended in the auction from a reward points balance.

22. (Original) The system of claim 20, further comprising:  
the central controller is constructed to determining a cost for purchasing reward points expended in the auction in excess of the customer's reward points balance and transmitting a request for payment for the cost of the reward points.

23. (Currently Amended) Computer executable code stored on a computer readable medium for conducting a customer affinity program auction, comprising:

a module configured to receive a bid of reward points from a customer for merchandise being offered in the auction; and

a module configured to determine a minimum opening bid price by applying an auction pricing discount factor in reward points based at least on the merchandise being auctioned and the time period of the auction.

24. (Original) The computer executable code of claim 23, further comprising: a module to receive registration information from the customer.

25. (Original) The computer executable code of claim 24, wherein the customer registration information includes payment information.

26. (Original) The computer executable code of claim 23, further comprising: a module to provide a preview of merchandise being offered in the auction.

27. (Original) The computer executable code of claim 23, further comprising a module to authenticate the customer; and  
a module to allow the customer to access a reward points balance.

28. (Original) The computer executable code of claim 27 further comprising a module to allow the customer to purchase additional reward points for use in the auction.

29. (Original) The computer executable code of claim 28, wherein the customer is allowed to purchase a specific number of reward points at an exchange rate.

30. (Original) The computer executable code of claim 29 further comprising a module to determine a cost for the reward points purchased and a module to transmit a request for payment for the cost of the reward points.

31. (Original) The computer executable code of claim 28, further comprising allowing a purchase of reward points on a floating basis.

32. (Original) The computer executable code of claim 23, further comprising: a module to deduct reward points expended in the auction from a reward points balance.

33. (Original) The computer executable code of claim 31, further comprising: a module to determine a cost for purchasing reward points expended in the auction in excess of the customer's reward points balance and a module to transmit a request for payment for the cost of the reward points.

34. (Currently Amended) A method of conducting a customer affinity program auction comprising:

determining a minimum opening bid price by applying an auction pricing discount factor in reward points based at least on the merchandise being auctioned and the time period of the auction.

35. (Original) The method of claim 34, further comprising: determining a bid increment.

36. (Currently Amended) A customer affinity program auction system comprising:

a central controller constructed to determine a minimum opening bid price by applying an auction pricing discount factor in reward points based at least on the merchandise being auctioned and the time period of the auction.

37. (Original) The system of claim 36, further comprising: the central controller is constructed to determine a bid increment.

38. (Currently Amended) Computer executable code stored on a computer readable medium for conducting a customer affinity program auction, comprising:

a module configured to determine a minimum opening bid price by applying an auction pricing discount factor in reward points based at least on the merchandise being auctioned and the time period of the auction.

39. (Original) The computer executable code of claim 38, further comprising: a module to determine a bid increment.

40. (Currently Amended) A method of conducting a customer affinity program auction comprising:

determining a minimum opening bid price by applying an auction pricing discount factor in reward points based at least on merchandise being auctioned and the time period of the auction; and

receiving a bid in cash from a customer using a computer terminal for the merchandise being offered in the auction,

wherein at least a portion of the bid is paid for by reward points converted to a cash value.

41. (Original) The method of claim 40, further comprising:  
receiving registration information from the customer.

42. (Original) The method of claim 41, wherein the customer registration information includes payment information.

43. (Original) The method of claim 40, further comprising:  
providing a preview of the merchandise being offered in the auction.

44. (Original) The method of claim 40, further comprising  
authenticating the customer; and  
allowing the customer to access a reward points balance.

45. (Original) The method of claim 40 wherein the reward points are converted to a cash value using an exchange rate.

46. (Currently Amended) A customer affinity program auction system, comprising:

a central controller constructed to receive a bid in cash from a customer for merchandise being offered in the auction,

wherein said central controller is constructed to determine a minimum opening bid price by applying an auction pricing discount factor in reward points based at least on the merchandise being auctioned and the time period of the auction, and

wherein at least a portion of the bid is paid for by reward points converted to a cash value.

47. (Original) The system of claim 46, further comprising:

the central controller is constructed to receive registration information from the customer.

48. (Original) The system of claim 47, wherein the customer registration information includes payment information.

49. (Original) The system of claim 46, further comprising:

the central controller is constructed to provide a preview of the merchandise being offered in the auction.

50. (Original) The system of claim 46, further comprising

the central controller is constructed to authenticate the customer and allow the customer to access a reward points balance.

51. (Original) The system of claim 46 wherein the central controller is constructed so that the reward points are converted to a cash value using an exchange rate.

52. (Currently Amended) Computer executable code stored on a computer readable medium for conducting a customer affinity program auction, comprising:

a module configured to receive a bid in cash from a customer for merchandise being offered in the auction, and

a module configured to determine a minimum opening bid price by applying an auction pricing discount factor in reward points based at least on the merchandise being auctioned and the time period of the auction,

wherein at least a portion of the bid is paid for by reward points converted to a cash value.

53. (Original) The computer executable code of claim 52, further comprising: a module to receive registration information from the customer.

54. (Original) The computer executable code of claim 53, wherein the customer registration information includes payment information.

55. (Original) The computer executable code of claim 52, further comprising: a module to provide a preview of the merchandise being offered in the auction.

56. (Original) The computer executable code of claim 52, further comprising a module to authenticate the customer; and  
a module to allow the customer to access a reward points balance.

57. (Original) The computer executable code of claim 52 wherein the module converts reward points to a cash value using an exchange rate.

**REMARKS**

**I. Status of the Application**

Claims 1-57 are pending in the application. Claims 1, 12, 23, 34, 36, 38, 40, 46 and 52, which are independent, have been amended. No new matter has been added by this Amendment.

**II. Response to Rejections Under 35 U.S.C. §102(e)**

Claims 1-57 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Patent No. 7,152,042 to Arkes (hereafter, "Arkes").

Applicants respectfully request reconsideration of the claims in view of the amendments now presented herein. For example, independent claim 1 has been amended for further clarification to recite, *inter alia*:

"A method of conducting a customer affinity program auction, comprising:

determining a minimum opening bid price by applying an auction pricing discount factor in reward points based at least on merchandise being auctioned and the time period of the auction; and

receiving a bid of reward points from a customer using a computer terminal for merchandise being offered in the auction."

Applicants respectfully submit that Arkes does not teach or suggest the above-recited features of independent claim 1, as amended. Specifically, Arkes does not teach or suggest determining a minimum opening bid price by applying an auction pricing discount factor in reward points based at least on merchandise being auctioned and the time period of the auction, as recited in at least independent claim 1. Independent claims 12, 23, 34, 36, 38, 40, 46 and 52 recite similar features to amended claim 1 as described herein.

The Examiner, on page four of the Office Action, asserts that Arkes discloses "determining a minimum opening bid price by applying an auction pricing discount factor in reward points based on merchandise being auctioned and the time period of the auction (see fig 12. "Minimum Opening Bid 49");"

Applicants submit that figure 12 of Arkes merely discloses a user interface display for a browsed auction item. Indeed, the user interface displays a "Minimum Opening Bid". However, Arkes provides no teaching or disclosure as to how the minimum opening bid is

determined. The claimed invention determines a minimum opening bid price of an item being auctioned by applying an auction pricing discount factor in reward points which is based at least on the item being auctioned and the time period of the auction. (see pages 16-19 of the Specification and figs. 6 and 14)

In view of the above, independent claims 1, 12, 23, 34, 36, 38, 40, 46 and 52 are believed distinguishable over Arkes for at least the reasons discussed above.

Reconsideration and withdrawal of the rejections of claims 1-57 under 35 U.S.C. §102(e) is respectfully requested.

Applicants have chosen in the interest of expediting prosecution of this patent application to distinguish the cited documents from the pending claims as set forth above. These statements should not be regarded in any way as admissions that the cited documents are, in fact, prior art. Likewise, Applicants have chosen not to swear behind the cited references or to otherwise submit evidence to traverse the rejection at this time. Applicants, however, reserve the right, as provided by 37 C.F.R. §§ 1.131 and 1.132, to do so in the future as appropriate.

Applicants have not specifically addressed the rejections of the dependent claims. Applicants respectfully submit that the independent claims, from which they depend either directly or indirectly, are in condition for allowance as set forth above. Accordingly, the dependent claims also are in condition for allowance. Applicants, however, reserve the right to address such rejections of the dependent claims in the future as appropriate.

Applicants believe that the application as amended is in condition for allowance and such action is respectfully requested.

**CONCLUSION**

Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of claims and allowance of this application.

**AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 3951-4001. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No 13-4500, Order No. 3951-4001. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

Respectfully submitted,  
MORGAN & FINNEGAN, L.L.P.

Dated: November 13, 2007

By: Nirav. Amin

Nirav S. Amin  
Registration No. 60,884  
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3 World Financial Center New York, NY  
10281-2101

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 09/624,439 Confirmation No.: 5413  
Applicant(s): Jonathan Ellenberg, et al. Group Art Unit: 3693  
Filed: July 24, 2000 Examiner: Felten, Daniel S.  
For: SYSTEM AND METHOD FOR CONDUCTING A CUSTOMER AFFINITY  
PROGRAM AUCTION Customer No.: 27123

**PETITION AND FEE FOR EXTENSION OF TIME (37 C.F.R. § 1.136(a))**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

1. This is a petition for an extension of time for responding to Office Action dated May 10, 2007.
2. The communication in connection with the matter for which this extension is requested  is filed herewith.  
 has been filed on \_\_\_\_.
3.  Applicant(s) is/are entitled to Small Entity Status.  
 Statement has already been filed

	Total Months <u>Requested</u>	Fee for Other than Small Entity	Fee for <u>Small Entity</u>
a. <input type="checkbox"/>	one month	\$120.00	\$60.00
b. <input type="checkbox"/>	two months	\$460.00	\$230.00
c. <input checked="" type="checkbox"/>	three months	\$1,050.00	\$525.00
d. <input type="checkbox"/>	four months	\$1,640.00	\$820.00
e. <input type="checkbox"/>	five months	\$2,230.00	\$1,115.00

f.  An extension for \_\_\_\_\_ months has already been secured for filing the above-identified communication and the fee paid therefor of \$\_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested. The fee for this extension (\$\_\_\_\_\_), minus the fee previously paid (\$\_\_\_\_\_) equals \$\_\_\_\_\_ (total fee due).

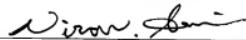
5.  A check in the amount of \$\_\_\_\_\_ to cover the extension fee is attached.

6.  Charge fee to Deposit Account No. 13-4500, Order No. 3951-4001. A DUPLICATE COPY OF THIS SHEET IS ATTACHED.

7.  The Commissioner is hereby authorized to charge any additional fees which may be required by this paper, or credit any overpayment to Deposit Account No. 13-4500, Order No. 3951-4001. A DUPLICATE COPY OF THIS SHEET IS ATTACHED.

Respectfully submitted,  
MORGAN & FINNEGAN, L.L.P.

Dated: November 13, 2007

  
\_\_\_\_\_  
Nirav S. Amin  
Registration No. 60,884

Correspondence Address:

Address Associated With Customer Number:  
27123

(212) 415-8700 Telephone  
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# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/624,439	07/24/2000	Jonathan Eilenberg	3951-4001	5413
27123	7590	05/10/2007		EXAMINER
MORGAN & FINNEGAN, L.L.P.				FELTEN, DANIEL S
3 WORLD FINANCIAL CENTER				
NEW YORK, NY 10281-2101			ART UNIT	PAPER NUMBER
			3693	
			MAIL DATE	DELIVERY MODE
			05/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Case 3951-4001 Atty CAH  
Due Date 8-10-07  
Statutory Date 11-10-07  
By DA

DOCKET DEPARTMENT  
Docketed By: DA Date: 5/15/07  
Audited By: Jm Date: 5/16/07  
Filed By: DA Date: 5/16/07

M F 05/15/07 12:20:

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/624,439	ELLENBERG ET AL.	
<b>Examiner</b>	<b>Art Unit</b>		
Daniel S. Felten	3693		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 January 1957.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-57 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-57 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Receipt of the response filed February 21, 2007 and remarks relating to the September 11, 2006 office action using MyPoints.com in view of Auction-Anything is acknowledged.

#### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-57 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-57 are rejected under 35 U.S.C. 102(e) as being anticipated by Arkes (US 7,152,042).

As in claim 1, 12, 23 Arkes discloses a method for receiving points from a customer using a computer terminal for merchandise being offered in the auction (see Arkes, fig. 10, Abstract, column 1, line 55 to column 2, line 14; and column 2, line 57 to column 3, line 3);

As in claim 2, 13, 24, 41, 47, 53 receiving registration information from the customer (see Arkes, Abstract; column 1, lines 56-65; column 3, lines 17-23; and column 4, lines 37+; and column 12, lines 8-14);

As in claim 3, 14, 25, 42, 48 54, wherein the customer registration includes payment information (see column 9, lines 16-24);

As in claim 4, 15, 26, 43, 49 providing a preview of the merchandise being offered in the auction (see Arkes, column 1, lines 58-65);

As in claim 5, 16, 27, 44, 56 authenticating the customer (see fig. 9: 304; column 11, line 65-67) and allowing the customer to access a reward points balance (Abstract; column 1, line 56 to column 2, line 14)

As in claim 6, 17, 28 allowing the customer to purchase additional reward points for use in the auction (see column 10, lines 47-51; and column 12, lines 40-58);

As in claim 7, 18, 29, 45, 57 wherein the customer is allowed to purchase a specific number of reward points at an exchange rate (see column 12, lines 59-62),

As in claim 8, 19, 30 further comprising determining a cost for the reward points purchased and transmitting a request for payment for the cost of the reward points (see column 12, lines 59-62);

As in claim 9, 20, 31 further comprising allowing a purchase of reward points on a floating basis (see column 12, lines 59-62)

As in claim 10, 21, 32, 50 deducting reward points expended in the auction from the rewards point balance (see column 10, lines 37-44);

As in claim 11, 22, 33 determining a cost for purchasing reward points expending in the auction in excess of the customer's reward points balance and transmitting a request for payment for the cost of the reward points (see column 12, lines 59-62)

As in claim 34, 36, 38 determining a minimum opening bid price by applying an auction pricing discount factor in reward points based on merchandise being auctioned and the time period of the auction (see fig 12. "Minimum Opening Bid 49");

As in claim 35, 37, 39 determining a bid increment.( see fig. 12 "Minimum Increment 5");

As in claim 40, 46 , 52 receiving a bid in cash from a customer using a computer terminal for merchandise being offered in the auction (see column 12, lines 59-62),

wherein at least a portion of the bid is paid for by reward points converted to a cash value (see column 12, lines 59-62)

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

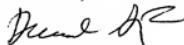
US Patents:

Dinwoodie (US 6,415,269) discloses an interactive remote location bidding system

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Felten whose telephone number is (571) 272-6742. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Daniel S Felten  
Examiner  
Art Unit 3693



DSF  
5/07/2007

<b>Notice of References Cited</b>		Application/Control No.	Applicant(s)/Patent Under Reexamination
		09/624,439	ELLENBERG ET AL.
Examiner	Art Unit	3693	Page 1 of 1
Daniel S. Felten			

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-7,152,042	12-2006	Arkes, Michael A.	705/37
*	B	US-6,415,269	07-2002	Dinwoodie, David Lionel	705/36R
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/624,439	07/24/2000	Jonathan Ellenberg	3951-4001	5413
27123	7590	11/19/2007		
MORGAN & FINNEMAN, LLP.				EXAMINER
3 WORLD FINANCIAL CENTER				FELTEN, DANIEL S
NEW YORK, NY 10281-2101			ART UNIT	PAPER NUMBER
			3694	
			NOTIFICATION DATE	DELIVERY MODE
			11/19/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOPatentCommunications@Morganfinnegan.com  
Shopkins@Morganfinnegan.com  
jmedina@Morganfinnegan.com

Case 3951-4001 Atty NSA  
Due Date 12-19-07  
Statutory Date 1-19-08  
By AE

DOCKET DEPARTMENT  
Docketed By: Q8 Date: 11/20/07  
Audited By: 18 Date: 11/20/07  
Filed By: 18 Date: 11/20/07

11/20/07-10:51

**Notice of Abandonment****Application No.**

09/624,439

**Examiner**

Daniel S. Felten

**Applicant(s)**

ELLENBERG ET AL.

Art Unit

3694

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--*

This application is abandoned in view of:

1.  Applicant's failure to timely file a proper reply to the Office letter mailed on 10 May 2007.
  - (a)  A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b)  A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c)  A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d)  No reply has been received.
2.  Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a)  The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b)  The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c)  The issue fee and publication fee, if applicable, has not been received.
3.  Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a)  Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b)  No corrected drawings have been received.
4.  The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5.  The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6.  The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7.  The reason(s) below:

the statutory period for response expired November 10, 2007

  
Ex. Daniel Felten  
A.U 3694  
Business Methods

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

U.S. Patent and Trademark Office  
PTOL-1432 (Rev. 04-01)